

October 13, 2010

Jose Porras

RE: Jose Porras v. Department of Corrections (DOC)
Allocation Review Request

Dear Mr. Porras:

We received your letter requesting a Director's review on August 31, 2010. On September 10, 2010, Karen Wilcox, Director's Review Coordinator sent a letter to both you and Lorna Ovena, DOC HR, addressing the timeliness of the request. Joanne Harmon, DOC HR, responded with an email indicating that the July 29, 2010 allocation determination letter was deposited in DOC outgoing mail the same day. Ms. Harmon acknowledged the allocation determination may not have been collected from the outgoing mail until the next day, July 30, 2010. You did not provide a response addressing timeliness.

WAC 357-13-080(1) requires employees to request a Director's review within thirty calendar days "of being provided the results of a position review or the notice of reallocation."

WAC 357-04-105(1) provides, in part, the following:

. . . when the civil service rules require an . . . employee . . . to receive notice, the notice must be provided by personal delivery, United States mail, or by telephone facsimile transmission with same-day mailing of copies unless the specific rule requiring notice allows for alternative methods of providing notice such as electronic mail ("e-mail"), state mail service, commercial parcel delivery or campus mail service.

WAC 357-04-105(2) then provides, in part, the following:

. . . service of notice upon parties will be regarded as completed when personal delivery has been accomplished; or upon deposit in the United States mail, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission. When a specific rule allows alternative methods of service, service upon parties will be regarded as completed when it is actually received by the party to which notice is being provided.

DOC deposited the allocation determination in the outgoing mail on July 29, 2010. Even when considering July 30, 2010, as the date it was deposited in the United States mail, the deadline for requesting review elapsed on August 30, 2010. Because this request was not received until August 31, 2010, it is untimely and the matter is closed.

Either party may appeal the Director's determination on timeliness to the Personnel Resources Board by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC. Please refer to any Collective Bargaining Agreement regarding appeal rights to the Personnel Resources Board.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 600 South Franklin, P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons, SPHR
Director's Review Program Supervisor
Legal Affairs Division

c: Lorna Ovena, DOC HR